



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1998

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0833

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113770.

The Texas Department of Public Safety (the "department") received a request for "any and all police reports, video recordings or any other information pertaining to the arrest of Robert Keith Babineaux." You state that you have released "front page" information to the requestor. *See generally Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.3d 177 (Tex. Civ. App.--Houston [14th dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, you assert that the remaining responsive information, which you have highlighted, is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the documents submitted.

Initially, we note the requestor's claim that she initially submitted the request to the department on September 2, 1997. If such is the case, the information would be presumed public as your request to this office was made more than ten business days after the date of the request. *See Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. Whether the department in fact received this letter is a question of fact that this office cannot resolve. However, as you inform this office that the requestor's original letter was never received by the department, we will address your argument under section 552.108 in reliance upon your assertion.

As amended, section 552.108, the "law enforcement exception," provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection,

investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

You state that criminal charges are pending as a result of the arrest of Mr. Babineaux for DWI, and that the responsive information reveals evidence that will be used by the state in any criminal proceeding. As the requested information relates to a pending criminal prosecution, we therefore find that release of the information you have highlighted would interfere with the detection, investigation, or prosecution of crime and thus, it is excepted from disclosure under section 552.108. Although section 552.108 authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See Gov't Code § 552.007.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref: ID# 113770

Enclosures: Submitted documents

cc: Ms. Karen Babineaux
P.O. Box 1361
Mission, Texas 78753-1361
(w/o enclosures)